

## QUESTION 1

On a clear day in the Town of Whitewater, Rhode Island, you can see the ocean from almost every home. George W. owned a five acre lot with two houses thereon in Whitewater. In June, 2002, his favorite daughter Hillary married her long time boy friend Billy. After the marriage, Bill and Hillary moved into one of George's houses. George continued to occupy the other dwelling.

A year after the marriage, George W. entered into a written agreement with Bill and Hillary to sell them the house they resided in plus one acre surrounding the house for \$200,000.00, which was one half of the value of the house and lot. The agreement provided for the payment of the purchase price in equal monthly installments over a period of ten years. Bill and Hillary faithfully made the installment payments and otherwise complied in full with their obligations under the agreement.

Three years after their marriage, Bill and Hillary had a dispute over Bill's involvement with an opera singer by the name of Monica. Hillary found out that Bill was doing more than listening to opera and after she confronted him, he admitted to having an affair.

At this point in the marriage, Bill and Hillary had one child, Chartreuse, who was one year old. Bill was a famous carnival barker, age 25 and made over \$250,000.00 per year. Hillary was a 23 year old college graduate and had been a homemaker ever since the birth of Chartreuse. The couple had no other assets other than the agreement to purchase the Whitewater property.

Upon filing for divorce in Rhode Island Family Court, Hillary requested permanent alimony, citing Bill's affair. Hillary also sought sole custody of Chartreuse with limited visitation rights for Bill, again relying on Bill's misconduct.

Bill objected to paying any alimony, arguing that Hillary was young and well educated, and therefore did not need alimony. He also argued that his affair had nothing to do with his relationship with his child. In his own counterclaim for divorce, Bill asked for joint custody of Chartreuse, with liberal visitation rights to him, assuming the child would be placed with Hillary.

To further complicate matters, George W. announced that he would not comply with the real estate agreement and refused to sell the house to Bill and Hillary because of the divorce.

Thereafter Bill, with leave of court, amended his counterclaim for divorce to add George as a party. Bill's amended counterclaim asked the Family Court to order George to specifically perform the agreement and transfer the Whitewater property to Bill and Hillary so it would be a marital asset for equitable distribution by the court.

**You are the Judge. After trial of the case, how would you rule on the following:**

1. Hillary's entitlement to alimony and, if your answer is affirmative, for how long?
2. Whether both Hillary and Bill should share custody of their child, and whether Bill's visitation should be limited because of his misconduct.
3. After being joined as a party, George W. filed a motion to dismiss Bill's claim against him. In his motion, George W. has raised the issues as to whether the Family Court has jurisdiction over him and whether it has jurisdiction to hear and decide the issue of specific performance of the real estate agreement. How would you rule on George's motion? In answering this last question, address only the jurisdictional issues raised by George in his motion.

## QUESTION 2

Umberto Beccho, an eccentric author, at age 69 in 2000, married his secretary, Kelly O'Brien. Umberto had two children, Giovanni and Guido, from a prior marriage. Although he rarely saw either of them or his two grandchildren, he often communicated with them by e-mail or by mailing transcripts of his new books to them.

He died in January 2004, a resident of North Providence, Rhode Island. His Will consisted of a handwritten document reading in its entirety:

*If I, Umberto Beccho, should die, all my money should go to  
Kelly, who should be in charge.*

*May 1, 2001*

*s/Umberto Beccho*

*We witnessed Umberto Beccho sign this Will.*

*s/Anthony DePasquale, Johnston, Rhode Island  
s/Marie DePasquale, Johnston, Rhode Island.*

Anthony and Marie DePasquale were old friends of Umberto.

After Umberto died, his desk drawers were searched by Kelly who found the Will in a sealed envelope marked "Important" along with the following items:

1. Four bank books, each in the name of "Umberto Beccho, as Trustee for . . ." each of his children and minor grandchildren.
2. Three bank books, each in the name of Umberto Beccho, Giovanni Beccho, and/or Guido Beccho.
3. The deed to his house which he had purchased in 1995.
4. A life insurance policy payable to his brother, Luigi, who died last year.

**Kelly has come to you for legal advice with regard to the Will and disposition of each of the items that were found in the envelope. How will you advise her?**

### QUESTION 3

Jeff Johnson consults you, his attorney, concerning the following situation: his mother, Janice Johnson, died three weeks ago. Her will names Jeff as executor. The Will contains a provision directing the payment of any debts, expenses, and taxes and another provision giving tangible personal property equally to Jeff, his brother, Mike, and his sister, Sophie. The residuary clause reads as follows:

“I give all the residue of my estate, real and personal, in equal shares to such of my children, Jeff, Mike, and Sophie, as are living at my death, provided, however, that gifts I have previously given to Jeff and Mike in the amount of \$10,000 each shall be deemed to be a part of the residue of my estate.”

Janice Johnson had bank accounts totaling \$300,000. She also owned a house worth \$450,000 in Smithfield, Rhode Island, but Jeff tells you that six months before his mother's death, and just before she entered a nursing home, she had placed the house in Sophie's name, reserving a life estate for herself. This event took place a month after Jeff, who had previously assisted his mother for over a decade, had been transferred to Iowa by his employer. Thereafter, Sophie assisted Janice in shopping, paying bills, visits to the doctor, etc.

**Based upon this fact pattern, what issues would you identify for your client?**

**Please list possible courses of action and results with regard to the distribution of Janice Johnson's estate.**

## QUESTION 4

The Narragansett Boat Association (NBA) sponsors an annual boat show at the Warwick Rhode Island Coliseum. In 1995, NBA entered into a written Agreement with a professional show producer - - Recreational Events, Inc. (REI) to produce the shows. The Agreement, while not expressly identifying NBA and REI as partners, has the following provisions:

1. Term of five (5) years, renewal by mutual agreement.
2. NBA to endorse only boat shows produced by REI, will encourage its members to exhibit only at said shows.
3. REI to obtain in its own name, all necessary leases, licenses, permits and insurance.
4. REI to indemnify NBA for any and all show-related losses.
5. In general REI assumes responsibility for producing the show.
6. NBA assumes responsibility for promotion and advertising;
7. Net show profits were to be shared seventy-five (75%) percent to REI and twenty-five (25%) percent to NBA.

After the initial five (5) year term, NBA and REI continued to put on boat shows in 2000 – 2003, without further written agreement, but pursuant to the same terms as above.

After nine (9) shows, NBA and REI had a falling out and NBA entered into an agreement with another show producer for its show in 2004. REI sued NBA in Rhode Island Superior Court to enjoin the 2004 NBA show, alleging that the 1995 Agreement established a partnership between NBA and REI to put on the NBA boat shows.

You are the Judge. Applying Rhode Island law, how would you rule as to whether REI has an enforceable partnership interest in the NBA boat shows? State whether your ruling would or would not be different in the event that the Agreement expressly identified NBA and REI

as “partners.” Include in your answer references to all of the facts on which you rely, together with relevant references to Rhode Island statutory and/or case law.

**Confine your answer to discussing issues of partnership law only.**

## QUESTION 5

You are a Rhode Island lawyer. Your client is Walter Wheels of Scituate, Rhode Island. He is a known collector of classic cars who has cultivated an excellent reputation in the community of people who trade in these vehicles. He relates the following information to you.

About two months ago, Walter read an advertisement in his town newspaper offering a 1966 Corvette for sale by private owner. The ad said that the car was a "collector's dream", in excellent condition, with very low mileage, price negotiable. It had a New York telephone number for responses.

Walter called the telephone number in the ad. The seller identified himself as Mark Mechanic. He told Walter that he restored classic cars for resale in his barn in upstate New York. Mark said that he purchased the Corvette in great condition from its original owner, but that he was forced to sell in order to pay his daughter's college tuition. He offered to sell the car to Walter for \$12,000.

Although Walter was tempted to buy, he knew that first he should have an expert inspect the vehicle. Because Walter did not know any expert in upstate New York, Mark offered to hire a "highly reputable" expert in the area. Walter authorized Mark to hire the expert and have him send his written evaluation to Walter.

A week later, Walter received a letter from the expert stating that the car was in "A-1" condition with a market value of approximately \$40,000. Walter immediately sent a check for \$12,000 to Mark, who deposited it into his savings account. After the check cleared, Mark had the car delivered to Walter's home in Scituate, Rhode Island.

Walter's elation soon turned into dismay and anger. The car was in only fair condition and was worth only about \$1,500. Upon investigation, Walter learned that the so-called "expert" hired by Mark was actually Mark's wife who knows nothing about cars. After

unsuccessfully trying to contact Mark by telephone and e-mail, Walter left a couple of angry messages on Mark's answering machine stating that unless his money were refunded immediately, he will pursue legal action against Mark.

Walter also learned that while Mark has been attending classic car shows throughout the northeast (including Rhode Island), he has been telling other collectors that Walter is a crook who reneges on his deals and cannot be trusted. Although Walter left Mark a telephone message demanding that he stop doing this, Mark has persisted.

Walter believes that he is entitled to a refund from Mark, and that his good reputation is being harmed. You agree with Walter. He authorizes you to proceed.

**Please describe what action you would take, and where.**



## QUESTION 6

You are a Rhode Island lawyer. Your client Ed Entrepreneur is the sole proprietor and operator of a business called "HomeHelpers". It offers residential housekeeping and grounds-keeping services for which it charges hourly fees. All HomeHelpers employees are instructed that they may perform only cleaning and maintenance tasks, and that they must decline customers' requests to do other kinds of work.

Ed has consulted you in connection with a letter he received from his best long-term customer, Landman Gentry. Gentry owns a lavish twenty-room estate. For the past three years, HomeHelpers' employee Jack Of-All-Trades has been assigned to work as caretaker at the Gentry estate. Jack loves the assignment because he enjoys excellent meals prepared in Gentry's gourmet kitchen, plus use of the tennis courts and swimming pool.

Gentry's letter states that recently Jack has performed extensive electrical re-wiring at the estate. Unfortunately, last week most of the building was destroyed by fire. An enclosed copy of the fire marshal's report attributes the fire to new but defective electrical wiring. Gentry contends that Ed is responsible for the damage because it was caused by Jack's faulty work.

Ed confronted Jack about the letter. Jack admitted that he had re-wired the building. Although he acknowledged that the electrical work exceeded his job duties, he accepted it because he feared that HomeHelpers would lose Gentry's business if he did not.

Ed also called Gentry, who told Ed the following: Jack represented that he was an experienced licensed electrician and that he could save Gentry a lot of money if he (Jack) did the re-wiring. Jack also assured Gentry that Ed would be pleased with the additional hourly fees which the re-wiring work would generate. Consequently, Gentry said, he believed that the re-wiring work was included within HomeHelpers' services.

Ed tells you that he never approved of any such re-wiring work at Gentry's estate, and that if he had known of it, he would have stopped it.

**1. Can Ed be held liable for the fire damage? Why or why not?**

**2. Can Jack be held liable for the fire damage? Why or why not?**

## QUESTION 7

Harry Smith owns 2,000 of the 12,000 shares issued and outstanding of Ampersand Corporation (“Ampersand”), a Rhode Island corporation. He is not an officer or director.

In fiscal year 2002, Ampersand was a profitable book publishing company, finding a niche with its science fiction works for adolescents and adults. However, in 2003, the company suffered substantial losses. The losses were the result of the decision of the board of directors in 2002 to expand the focus of the company into interactive science fiction games on the internet, an area new to the company.

The decision of the board of directors to enter this new market was based on a report and recommendation of Ampersand’s chief financial officer (“CFO”). Harry Smith believes that the CFO’s report and projections of profitability were prepared negligently. Smith just learned that the CFO recently left Ampersand. When Smith inquired further, he learned of a confidential internal audit that had been prepared only a few days before the CFO’s departure which revealed that the CFO had made numerous errors over the years in his work. Without placing blame on any particular person, the internal audit faulted Ampersand for not having sufficient procedures in place to detect such errors.

On January 15, 2004, Smith received, by first class mail postmarked January 12, 2004, a notice of a meeting of shareholders to be held on January 30, 2004. The notice included a copy of a plan of merger of Ampersand with Warner Books and indicated that the Ampersand board of directors had approved the merger plan. The notice also stated that a vote would be taken at the meeting for the shareholders to approve the merger plan. Smith plans to attend the meeting of the shareholders and vote his 2,000 shares against the merger plan.

**Please explain your answers to the following questions:**

1. Can Harry Smith hold the directors personally liable for Ampersand's losses suffered as a result of their decision to expand the company's business into interactive science fiction games on the internet?
2. Did Harry Smith receive proper notice of the meeting of the shareholders?
3. Assuming the notice was proper, how many shares will it take to defeat the merger plan?
4. If the merger plan is approved over Harry Smith's objection, will Harry have any rights?

## **QUESTION 8**

Ajax Corporation (“Ajax”) manufactures two different size chips -- large and small -- for slot machines used in casinos around the country. On September 1, 2003, Big Sky Casino (“Big Sky”) faxed Ajax an order to buy 100,000 small chips for the Big Sky slot machines. Big Sky’s slot machines were designed in such a way that only the small chips could be used. Big Sky’s offer provided for payment in the amount of \$50,000 on delivery of the chips and requested that shipment take place on or before October 1, 2003.

On September 10, 2003, Ajax faxed Big Sky written confirmation that Ajax would provide the 100,000 chips as requested. However, Ajax’s confirmation indicated that shipment could not occur until the beginning of November, but no later than November 15, 2003, due to a backlog in orders from other casinos.

There was no further communication between the parties until November 5, 2003, when Ajax shipped 100,000 chips to Big Sky. On November 7, 2003, immediately upon receiving the chips, Big Sky sent by overnight delivery a check in the amount of \$50,000. The next day, upon inspecting the chips, Big Sky noticed that the chips were large and thus could not be used in the Big Sky slot machines. Big Sky immediately stopped payment on the \$50,000 check and notified Ajax by fax that, because the chips were the wrong size, Big Sky was canceling the order. Upon receipt of Big Sky’s fax cancellation, Ajax contacted Big Sky and said it would cure the problem immediately. Ajax then sent 100,000 small chips to Big Sky, which received them on November 9, 2003.

Big Sky inspected the new lot of chips and found that it conformed to its order of 100,000 small chips. Nonetheless, Big Sky returned the shipment, having found in the interim that Beta Corporation, another chip maker, was willing to sell 100,000 small chips to Big Sky for \$40,000.

When Ajax presented Big Sky's \$50,000 check to the bank for payment, the bank refused to honor it due to the stop payment order. Subsequently, Ajax brought suit against Big Sky seeking full payment for the small chips.

**Please explain your answers to the following questions assuming that the entire transaction is governed by Rhode Island law:**

1. Was there a contract between Ajax and Big Sky for the sale of chips?
2. Assuming there was a contract, did Ajax's delivery of large chips give Big Sky the right to cancel its order?

## QUESTION 9

On a winter day, Amy Beech, a noted musician, went to the Axelbone Music Store at the Stateline Mall, a large shopping mall that straddles the state line between Attleboro, Massachusetts, and Pawtucket, Rhode Island. Amy's intention was to purchase a piano from Axelbone. At the time, the parking lot had an accumulation of snow which had been moved away by the property manager into a number of piles. The anchor tenant and property manager of the Stateline Mall was Gigantic Mart, which was located on the Rhode Island side of the state line in Pawtucket, Rhode Island. The remainder of the stores, including Axelbone Music, were located in Attleboro, Massachusetts. Upon leaving Axelbone Music without having purchased a piano, Amy Beech fell and broke her ankle in the parking lot. Subsequently, a civil action was filed in Rhode Island Superior Court for Providence County. In the case, Ms. Beech is alleging that the negligence of Axelbone and Gigantic Mart contributed to her injury.

The law of Massachusetts has been established to be that an owner of property has a right to clear off the snow from his property and to deposit it in a pile away from the sidewalk. The mere piling of snow away from the sidewalk is not shown under Massachusetts law to have artificially created a condition that increased or changed the direction of the flow of water which would have created liability on the defendant. Rhode Island law is contrary and applies the reasonably prudent person standard to accumulations of snow and ice on private property.

In the Providence County Superior Court case, defendants, Gigantic Mart and Axelbone Music have moved for summary judgment alleging that the Massachusetts law applies.

**Please discuss the application of Massachusetts and Rhode Island law and the likely results of the motion for summary judgment by the defendants.**

